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funds that you have already received or will receive from § 872.32 of this chapter. You may also use the prior balance replacement funds received from § 872.29 of this chapter to address coal problems subsequent to certification. Any coal reclamation projects that you do must conform to sections 401 through 410 of SMCRA and part 874 of this chapter.

[73 FR 67640, Nov. 14, 2008]

§ 875.15 Reclamation priorities for noncoal program.

(a) This section applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and other such facilities serving the public adversely affected by mineral mining and processing practices); and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

(b) Following certification pursuant to § 875.13, the projects and construction of public facilities identified in paragraph (a) of this section shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, general welfare and property from the extreme danger of adverse effects of mineral mining and processing practices;

(2) The protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices; and

(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(c) Enhancement of facilities or utilities shall include upgrading necessary to meet local, State, or Federal public health or safety requirements. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

(d) Notwithstanding the requirements specified in paragraph (b) of this section, where the Governor of a State

or the equivalent head of an Indian tribe, after determining that there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States or on Tribal lands impacted by coal or minerals development, submits a grant application as required by paragraph (e) of this section and the Director concurs in such need, as set forth in paragraph (f) of this section, the Director may grant funds made available under section 402(g)(1) of the Act, 30 U.S.C. 1232, to carry out such activities or construction.

(e) To qualify for funding pursuant to the authority in paragraph (d) of this section, a State or Indian tribe must submit a grant application that specifically sets forth:

(1) The need or urgency for the activity or the construction of the public facility;

(2) The expected impact the project will have on the coal or minerals industry in the State or Indian tribe;

(3) The availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved;

(4) Documentation from other local, State, and Federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by their agency;

(5) The impact on the State or Indian tribe, the public, and the minerals industry if the activity or facility is not funded;

(6) The reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities; and

(7) An analysis and review of the procedures used by the State or Indian tribe to notify and involve the public in this funding request and a copy of all comments received and their resolution by the State or Indian tribe.

(f) After review of the information contained in the application, the Director will, if necessary to ensure adequate public notification, prepare a FEDERAL REGISTER notice regarding

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the State's or Indian Tribe's submission and provide for public comment. The Director will then:

- (1) Evaluate any comments received;
- (2) Determine whether the funding meets the requirements of this part;
- (3) Determine whether the funding is in the best interest of the State or Indian tribe AML program;
- (4) If the determinations under paragraphs (f)(2) and (f)(3) of this section are positive, approve the request for funding the activity or construction; and
- (5) Approve funding under paragraph (f)(4) of this section only at a cost commensurate with its benefits towards achieving the purposes of the Surface Mining Control and Reclamation Act of 1977.

[59 FR 28173, May 31, 1994, as amended at 68 FR 9502, Feb. 27, 2003]

§ 875.16 Exclusion of certain noncoal reclamation sites.

(a) You, the uncertified State or Indian tribe, may not use moneys from the Fund or from prior balance replacement funds provided under § 872.29 of this chapter for the reclamation of sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

(b) You, the certified State or Indian tribe, may not use moneys distributed from the Fund under section 402(g)(1) of SMCRA for the reclamation of sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

[73 FR 67640, Nov. 14, 2008]

§ 875.17 Land acquisition authority—noncoal.

The requirements specified in parts 877 (Rights of Entry) and 879 (Acquisition, Management and Disposition of Lands and Water) shall apply to a

State's or Indian tribe's noncoal program except that, for purposes of this section, the references to coal shall not apply. In lieu of the term *coal*, the word *noncoal* should be used.

[59 FR 28173, May 31, 1994]

§ 875.18 Lien requirements.

The lien requirements found in part 882—Reclamation on Private Land shall apply to a State's or Indian tribe's noncoal reclamation program under section 411 of the Act, except that for purposes of this section, references made to coal shall not apply. In lieu of the term *coal*, the word *noncoal* should be used.

[59 FR 28173, May 31, 1994]

§ 875.19 Limited liability.

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

[59 FR 28173, May 31, 1994]

§ 875.20 Contractor eligibility.

Every successful bidder for any contract by an uncertified State or Indian tribe under this part, or for a contract by a certified State or Indian tribe to undertake noncoal reclamation using moneys distributed from the Fund under section 402(g)(1) of SMCRA, must be eligible under §§ 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations. This section does not apply to any contract by a certified State or Indian tribe that is not for coal reclamation.

[73 FR 67641, Nov. 14, 2008]